

CHAPTER 238

TEACHERS' RETIREMENT SYSTEM

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238.01 Definitions.— The following words and phrases as used in this chapter shall have the following meanings unless a different meaning is plainly required by the context:

(1) "Retirement system" means the Teachers' Retirement System of Florida provided for in s. 238.02.

(2) "Department" means the Department of Management Services.

(3) "Teacher" means any member of the teaching or professional staff and any certificated employee of any public free school, of any district school system and career center, any member of the teaching or professional staff of the Florida School for the Deaf and Blind, child training schools of the Department of Juvenile Justice, the Department of Corrections, and any tax-supported institution of higher learning of the state, and any member and any certified employee of the Department of Education, any certified employee of the retirement system, any full-time employee of any nonprofit professional association or corporation of teachers functioning in Florida on a statewide basis, which seeks to protect and improve public school opportunities for children and advance the professional and welfare status of its members, any person now serving as superintendent, or who was serving as county superintendent of public instruction on July 1, 1939, and any hereafter duly elected or appointed superintendent, who holds a valid Florida teachers' certificate. In all cases of doubt the Department of Management Services shall determine whether any person is a teacher as defined herein.

(4) "Member" means any person included in the membership of the retirement system as provided in s. 238.05.

(5) "Employer" means the state, the school boards of all the districts of the state employing teachers, or community college district boards of trustees, subject to the provisions of this chapter, any other agency of and within the state by which the teacher is paid, or any nonprofit professional association or corporation of teachers as referred to in subsection (3).

(6) "Service" means service as a teacher as described in subsection (3) rendered while a member of the retirement system.

(7) "Prior service" means service as a teacher rendered prior to the date of establishment of the

retirement system and for which credit is allowable under s. 238.06.

(8) "Membership service" means service as a teacher as described in s. 238.06.

(9) "Creditable service" means prior service plus membership service for which credit is allowable under s. 238.06.

(10) "Beneficiary" means any person in receipt of a retirement allowance or other benefit as provided by this chapter.

(11) "Regular interest" means interest at such rate as may be set from time to time by the Department of Management Services.

(12) "Accumulated contributions" means the sum of all the amounts deducted from the salary of a member and credited to his or her individual account in the Annuity Savings Trust Fund provided in s. 238.09(1), together with regular interest on such accounts.

(13) "Earnable compensation" means the full compensation payable to a teacher working the full working time for his or her position. In respect to plans A, B, C, and D only, in cases where compensation includes maintenance, the Department of Management Services shall fix the value of that part of the compensation not paid in money; provided that all members shall from July 1, 1955, make contributions to the retirement system on the basis of "earnable compensation" as defined herein and all persons who are members on July 1, 1955, may, upon application, have their "earnable compensation" for the time during which they have been members prior to that date determined on the basis of "earnable compensation" as defined in this law, upon paying to the retirement system, on or before the date of retirement, a sum equal to the additional contribution with accumulated regular interest thereon they would have made if "earnable compensation" had been defined, at the time they became members, as it is now defined. However, earnable compensation for all plan years beginning on or after July 1, 1990, shall not include any amounts in excess of the compensation limitation (originally \$200,000) established by s. 401(a)(17) of the Internal Revenue Code prior to the Omnibus Budget Reconciliation Act of 1993, which limitation shall be adjusted for changes in the cost of living since 1989, in the manner provided by s. 401(a)(17) of the Internal Revenue Code of 1991. This limitation, which has been part of the Teachers' Retirement System since plan years beginning on or after July 1, 1990, shall be adjusted as required by federal law for qualified government plans.

(14) "Average final compensation," with respect to plans A, B, C, and D of s. 238.07, means the average annual earnable compensation of a member for the 10 years of the member's service as a teacher during which he or she received his or her highest

salary; and with respect to plan E of s. 238.07, "average final compensation" means the average annual earnable compensation of a member for 10 years during the last 15 years prior to retirement during which he or she contributed and in which the member's annual earnable compensation was highest or the average of his or her annual earnable compensation since July 1, 1945, if greater. For a teacher who is a member of the Legislature, "average final compensation" means the greater of the average annual earnable compensation for 10 years during the last 15 years prior to the beginning of his or her legislative service during which he or she contributed and in which his or her earnable compensation was highest or the average annual earnable compensation for 10 years during the last 15 years prior to retirement during which he or she contributed and in which his or her annual earnable compensation was highest or the average of his or her annual earnable compensation since July 1, 1945, if greater.

(15) "Annuity" means annual payments for life derived as provided in this chapter from the accumulated contributions of a member. All annuities shall be paid in equal monthly installments.

(16) "Pension" means annual payments for life derived as provided in this chapter, from money provided by the state and means, when used in conjunction with plan E, the excess of the retirement allowance as provided by plan E over the annuity as defined above. All pensions shall be paid in equal monthly installments.

(17) "Retirement allowance" means annual payments for life and is the sum of the annuity plus the pension; except that, when used in conjunction with plan E of s. 238.07, "retirement allowance" means the total retirement allowance payable under plan E.

(18) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of the mortality tables adopted by the division.

(19) Gender-specific pronouns whenever used include the other gender.

History.—s. 1, ch. 19014, 1939; CGL 1940 Supp. 892(156); s. 1, ch. 20749, 1941; s. 1, ch. 22062, 1943; s. 1, ch. 22693, 1945; s. 1, ch. 23864, 1947; s. 1, ch. 25398, 1949; s. 1, ch. 29942, 1955; s. 1, ch. 61-301; s. 1, ch. 61-362; s. 1, ch. 63-554; s. 1, ch. 67-140; ss. 15, 19, 31, 35, ch. 69-106; s. 1, ch. 69-300; s. 1, ch. 70-198; ss. 1, 2, ch. 70-441; s. 63, ch. 71-377; s. 70, ch. 72-221; s. 1, ch. 73-326; s. 2, ch. 77-120; s. 43, ch. 77-147; s. 8, ch. 79-3; s. 141, ch. 81-259; s. 1, ch. 87-19; s. 94, ch. 92-279; s. 55, ch. 92-326; s. 7, ch. 95-148; s. 16, ch. 95-154; s. 14, ch. 96-368; s. 39, ch. 99-8; s. 73, ch. 99-255; s. 19, ch. 2004-357.

238.02 Name and date of establishment.—A retirement system is established and placed under the management of the Department of Management Services for the purpose of providing retirement allowances and other benefits for teachers of the state. The retirement system shall begin operations on

July 1, 1939. It has such powers and privileges of a corporation as may be necessary to carry out effectively the provisions of this chapter and shall be known as the "Teachers' Retirement System of the State," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held in trust for the purpose for which received.

History.—s. 2, ch. 19014, 1939; CGL 1940 Supp. 892(157); ss. 31, 35, ch. 69-106; s. 1, ch. 73-326; s. 74, ch. 99-255.

238.021 Teachers' Retirement System; plans.—The Teachers' Retirement System shall be deemed to be divided into five plans to be designated plans A, B, C, D, and E and ss. 238.01 to 238.181, inclusive, shall control with respect to plans A through E and membership therein, except as provided for under s. 238.31.

History.—s. 4, ch. 61-301; s. 2, ch. 63-554.

238.03 Administration.—

(1) The general administration and the responsibility for the proper operation of the retirement system and for making effective the provisions of this chapter are vested in the Department of Management Services.

(2) The department shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds created by this chapter and for checking the experience of the retirement system.

(3) The Department of Legal Affairs shall be the legal adviser of the department.

(4) The department shall employ such agents, servants and employees as in its judgment may be necessary to carry out the terms and provisions of this chapter and shall provide for their compensation. Among the employees of the department shall be an actuary who shall be the technical adviser of the department on matters regarding the operation of the funds created by the provisions of this chapter and who shall perform such other duties as are required in connection therewith.

(5) In the year 1943 and at least once in each 5-year period thereafter, the actuary shall make an actuarial investigation of the mortality, service and salary experience of the members and beneficiaries as defined in this chapter, and shall make a valuation of the various funds created by the chapter, and having regard to such investigation and valuation, the department shall adopt such mortality and service tables as shall be deemed necessary, and shall certify the rates of contribution payable under the provisions of this chapter.

(6) The actuary shall make an annual valuation of the assets and liabilities of the funds of the retirement system on the basis of the tables adopted by the department in accordance with the requirements of this section, and shall prepare an annual statement of the

amounts to be contributed by the state in accordance with s. 238.09.

(7) The department shall publish annually the valuation, as certified by the actuary, of the assets and liabilities of the various funds created by this chapter, a statement as to the receipts and disbursements of the funds, and a statement as to the accumulated cash and securities of the funds.

(8) The department shall keep a record of all of its proceedings and such record shall be open to inspection by the public.

History.—s. 3, ch. 19014, 1939; CGL 1940 Supp. 892(158); s. 1, ch. 28109, 1953; s. 2, ch. 29942, 1955; s. 19, ch. 63-400; ss. 11, 31, 35, ch. 69-106; s. 1, ch. 69-184; s. 64, ch. 71-377; s. 1, ch. 73-326; s. 95, ch. 92-279; s. 55, ch. 92-326; s. 37, ch. 94-249; s. 75, ch. 99-255; s. 29, ch. 2004-335; s. 18, ch. 2013-18.

238.05 Membership.—

(1) The membership of the retirement system shall consist of the following:

(a) All persons who were teachers at any time during the school years 1936-1937 through 1938-1939 shall become members as of July 1, 1939, unless, prior to December 1, 1939, any such teacher shall file with the board of trustees on a form prescribed by such board a notice of his or her election not to be covered in the membership of the retirement system and a duly executed waiver of all present and prospective benefits which would otherwise inure to him or her on account of his or her participation in the retirement system; provided, that all persons who were not eligible for membership in the retirement system at the time the system became effective and who are now eligible for membership by reason of the redefinition of the word "teacher," and by reason of having served in any of the capacities included in the redefinition of the term during any of the school years 1936-1937 through 1942-1943 shall become members as of July 1, 1943, unless prior to December 1, 1943, any such person shall file with the board of trustees a notice of his or her election not to be covered in the membership of the retirement system as prescribed above; provided, that all persons who become eligible for membership in the retirement system by reason of the redefinition in s. 238.01, of the word "teacher," and who served in any of the capacities included in the redefinition of the term during any of the school years 1936-1937 through 1944-1945, shall become members as of July 1, 1945, unless prior to December 1, 1945, any such person shall file with the board of trustees a notice of his or her election not to be covered in the membership of the retirement system as prescribed above; provided also that all persons who become eligible for membership in the retirement system by reason of the redefinition in s. 238.01(4), Florida Statutes 1949, of the word "teacher" and who served in any of the capacities included in the redefinition of the term during any of the school years 1936-1937 through 1946-1947 shall become members

as of July 1, 1947, unless prior to December 1, 1947, any such person shall file with the board of trustees a notice of his or her election not to be kept in the membership of the retirement system as prescribed above; provided, however, that any person who has heretofore filed a nonelection waiver blank shall not be required to make another such election; provided, further, that any person who heretofore has elected not to become a member shall until July 1, 1949, have the option of becoming a member.

(b) All persons who became or who become teachers on or after July 1, 1939, except as provided in paragraph (a) and subsection (5) hereof, shall become members of the retirement system by virtue of their appointment as teachers. However, employees who are not members of the teaching or professional staff shall only become members of the retirement system by filing a notice with the department of their election to become members.

(2) A teacher whose membership in the retirement system is contingent on his or her own election and who has elected not to become a member, may thereafter apply for and be admitted to membership and receive credit for prior service; provided no such teacher shall receive credit for service prior to such election unless he or she is admitted to membership as of a date before May 1, 1959. Credit for service rendered prior to July 1, 1939, shall be for continuous employment only except that one period of absence of not more than 5 years will be allowed in computing such prior service credit, provided, however, that a teacher admitted to membership prior to January 1, 1955, shall receive credit for all prior service and if he or she has retired, his or her retirement allowance shall be increased effective July 1, 1961. A teacher admitted to membership under this provision must pay into the Annuity Savings Trust Fund prior to his or her retirement contributions plus regular interest thereon based upon all salary received as a teacher prior to and after July 1, 1939.

(3) Except as otherwise provided in s. 238.07(9), membership of any person in the retirement system will cease if he or she is continuously unemployed as a teacher for a period of more than 5 consecutive years, or upon the withdrawal by the member of his or her accumulated contributions as provided in s. 238.07(13), or upon retirement, or upon death; provided that the adjustments prescribed below are to be made for persons who enter the Armed Forces of the United States during a period of war or national emergency and for persons who are granted leaves of absence. Any member of the retirement system who within 1 year before the time of entering the Armed Forces of the United States was a teacher, as defined in s. 238.01, or was engaged in other public educational work within the state, and member of the

Teachers' Retirement System at the time of induction, or who has been or is granted leave of absence, shall be permitted to elect to continue his or her membership in the Teachers' Retirement System; and membership service shall be allowed for the period covered by service in the Armed Forces of the United States or by leave of absence under the following conditions:

(a) A person who has been granted leave of absence shall file with the department before his or her next contribution is due an application to continue his or her membership during the period covered by the person's leave of absence and, if such application is filed, shall make his or her contribution to the retirement system on the basis of his or her last previous annual salary as a teacher, and shall, prior to retirement, pay in full to the system such contributions with accumulated regular interest. Such contributions with interest may be paid at one time or in monthly, quarterly, semiannual, or annual payments in the person's discretion.

(b) A person who enters or who has entered the Armed Forces of the United States may either continue his or her membership according to the plan outlined under paragraph (a) or, in lieu thereof, may file with the department at any time following the close of his or her military service an application that his or her membership be continued and that membership service be allowed for not more than 5 years of his or her period of service in the Armed Forces of the United States during any period of war or national emergency; provided that any such person shall, prior to retirement, pay in full his or her contributions with accumulated regular interest to the retirement system for the period for which he or she is entitled to membership service on the basis of his or her last previous annual salary as a teacher. Such contributions with interest may be paid to the department at one time or in monthly, quarterly, semiannual, or annual payments in the person's discretion.

(4) The department may in its discretion deny the right to become members to any class of teachers who are serving on a temporary or any other than a per annum basis, and it may also in its discretion make optional with members in any such class their individual entrance into membership.

(5) Any person may, at his or her option, choose not to become a member of the Teachers' Retirement System when:

(a) An election is made to the division not to become a member within 60 days of appointment to a teaching position as defined in this chapter or within 60 days from the date this law becomes effective.

(b) Any election hereunder will not affect any rights accrued in the retirement system to which the person belongs.

History.—s. 5, ch. 19014, 1939; CGL 1940 Supp. 892(160); s. 2, ch. 20749, 1941; s. 1, ch. 21971, 1943; s. 2, ch. 22062, 1943; s. 2, ch. 22693, 1945; s. 2, ch. 23864, 1947; s. 7, ch. 24337, 1947; s. 11,

ch. 25035, 1949; s. 2, ch. 25398, 1949; s. 1, ch. 28196, 1953; s. 3, ch. 29942, 1955; s. 1, ch. 57-357; s. 1, ch. 61-303; s. 1, ch. 61-458; ss. 31, 35, ch. 69-106; s. 1, ch. 69-108; s. 9, ch. 84-114; s. 1, ch. 95-143; s. 8, ch. 95-148; s. 76, ch. 99-255; s. 17, ch. 2000-339; s. 25, ch. 2016-10.

238.06 Membership application, creditable service, and time for making contributions.—

(1) Under such rules and regulations as the Division of Retirement shall adopt, each teacher upon becoming a member shall file with the division an application showing date of birth and such other necessary information as the division may require for the proper operation of the retirement system. Until such application is filed no teacher or his or her beneficiary shall be eligible to receive any benefits under this chapter. If a member has been a teacher in Florida, he or she shall itemize on such application all service as a teacher rendered prior to the date of establishment of the retirement system, including service in a similar capacity in other states rendered by him or her prior to July 1, 1939, for which he or she claims credit. Persons not eligible to membership in the retirement system as of July 1, 1939, and now eligible to membership shall file with the division an application and shall meet with all other requirements prescribed above. All such persons shall be entitled to prior service credit for the years prior to July 1, 1939, as prescribed in subsection (4). Any person made eligible to membership in the retirement system by provisions of this law may elect:

(a) To make no contributions for the school years between 1939-1940 and 1952-1953, inclusive, and if he or she so elects, shall be entitled to no membership credit for those years except as otherwise provided in this chapter.

(b) To make contributions with accumulated regular interest to the retirement system on or before the time of retirement of such member for such years after July 1, 1939, as he or she served as a teacher, at the prescribed rate on the basis of his or her salary for those years, and if such contributions are made, he or she shall be entitled to membership service credit for such years.

(2) With respect to plans A, B, C, or D as set forth in s. 238.07, any member of the retirement system may elect to contribute to the retirement system an amount which shall be equivalent to the difference between the amount such member has contributed and the amount he or she would have contributed had the provisions of s. 238.01(13) been in effect July 1, 1939, and such election must be made and the amount paid into the retirement system on or before the time of the retirement of such member.

(3) The division shall fix and determine by appropriate rules and regulations how much service in any year is the equivalent of a year of service, but in no case shall it allow any credit for a period of absence

without pay of more than a month's duration nor shall it allow credit for more than 1 year of service for all service in any school year.

(4) Subject to the above restriction and to such other rules and regulations as the division shall adopt, the division shall verify, as soon as practicable after the filing of the application, the statement of service therein claimed and shall issue to each person who becomes a member or any person with prior teaching service in the state who becomes a member of the retirement system, a prior service certificate certifying the length of service with which he or she is credited on the basis of his or her statement of service. Such prior service credit shall include credit for service rendered prior to date of establishment as a teacher within the state or in a similar capacity outside the state but not more than 10 years of credit for service outside the state shall be included. Credit for prior service outside the state may be claimed only by a person employed as a teacher in the state prior to July 1, 1939; provided that any person who became a member of the system after July 1, 1939, but prior to July 1, 1955, and remained a member for 10 years shall be entitled to receive out-of-state prior service credit for a period not exceeding 10 years; provided that any person with out-of-state service who became a member of the system after July 1, 1939, but prior to July 1, 1955, and remained a member for 10 years shall be entitled to receive membership service credit for a period of not exceeding 10 years, including credit for the period covered by service in the Armed Forces of the nation during World War II; provided such member was a public school teacher within 1 year before entering the armed services; and provided he or she resumed teaching, if such member shall, prior to retirement, make contribution to the retirement system with accumulated regular interest thereon in an amount equal to the contribution he or she would have made if such service had been rendered in the state subsequent to July 1, 1939; provided that no member who receives, or who is entitled to receive, a pension or annuity from any other state or county or municipality or other taxing district shall receive out-of-state prior service credit or membership service credit as set forth above; provided, however, that the change in this subsection shall not affect the rights of persons who have retired when this amendment to the law takes effect; provided, however, that any person who becomes a member of the system on or after July 1, 1955, and who has moved from another state to Florida, and becoming employed in a category covered by the Teachers' Retirement System, must teach in the state for 5 years before being entitled to receive any out-of-state service credit. After having been employed within the state for a period of 5 years, a teacher may establish and receive credit for 1 year of out-of-state service for each additional year of service credit within

the state, with a maximum of 10 years out-of-state credit allowed. In order to establish and receive this out-of-state credit, a teacher, who became a member of the system on or after July 1, 1955, but prior to October 1, 1963, must pay into the retirement system prior to retirement total contributions equal to 8 percent (plus accumulated regular interest thereon), of such out-of-state compensation as the teacher received during those years of out-of-state service for which the teacher receives out-of-state credit, provided, however, that contributions on out-of-state salary received prior to July 1, 1939, will not be required of any member in this category retiring on or after July 1, 1969. In order to establish and receive this out-of-state credit, a teacher who becomes a member of the retirement system on or after October 1, 1963, must pay into the retirement system prior to retirement, total contributions which are in addition to the regular membership contributions and which, when accumulated with regular interest thereon, are equal to the actuarial equivalent at the time of retirement of the monthly benefit which becomes payable at retirement on account of out-of-state credit. In the event that such accumulated additional contributions at time of retirement are less than the actuarial equivalent at time of retirement of the monthly benefit attributable to out-of-state credit, the monthly benefit attributable to out-of-state credit shall be reduced by an amount equal to the product of:

(a) The monthly benefit attributable to out-of-state credit, and

(b) The ratio that such deficiency bears to the actuarial equivalent of the monthly benefit attributable to the out-of-state credit.

If such accumulated additional contributions are in excess of the actuarial equivalent at time of retirement of the monthly benefit attributable to out-of-state credit, such excess shall be paid in a lump sum to the member at time of retirement. No person may receive retirement benefits for less than 10 years of service credit earned in Florida.

(5) Any person who is a member of the Teachers' Retirement System, and who has been employed as an employee of any county in Florida or any county board of public instruction of Florida or the state or the United States Department of Agriculture at Welaka, Florida, shall upon payment of accumulated contributions for the years subsequent to July 1, 1939, receive credit for both prior and membership service for all years in which such person was employed by any county in Florida or any county board of public instruction of Florida or the state or the United States Department of Agriculture at Welaka, Florida, toward retirement in the Teachers' Retirement System; provided, such contributions shall be paid on or before the date of the retirement of such member.

(6) So long as membership continues, a prior service certificate shall be final and conclusive for retirement purposes as to such prior service credit, unless modified by the division upon application made by the member within 1 year after the date of issuance or modification of a prior service certificate or upon the discovery by the division of error or fraud.

(7) When membership ceases such certificate shall become void; should the teacher again become a member, such teacher shall enter the system as a teacher not entitled to prior service credit, except as provided in s. 238.07(12)(c); and provided further that if the teacher should so become a member following the first occurrence of cessation of membership, such certificate shall be valid until the membership next ceases.

(8) Creditable service at retirement on which the retirement allowance of a member shall be based shall consist of the membership services rendered by him or her since he or she last became a member, and also, if the member has a prior service certificate which is in full force and effect, the service certified on his or her prior service certificate.

(9) Subject to the provisions of subsection (4), out-of-state service credit shall be allowed for:

(a) Service rendered as a teacher in American overseas dependent schools conducted by the Armed Forces of the United States for children of citizens of the United States residing in areas outside the continental United States, and

(b) Service rendered as a teacher in federally assisted binational schools serving as demonstration centers for methods and practices employed in the United States, as provided in 22 U.S.C. s. 1448.

(10) A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his or her employment while a member of any state retirement system shall, upon his or her return to active employment with a covered employer for 1 calendar month or upon his or her approval for disability retirement in accordance with s. 238.07, receive full retirement credit for the period prior to such return to active employment or disability retirement for which the workers' compensation payments were received. However, no member may receive retirement credit for any such period occurring after the earlier of the date of maximum medical improvement as defined in s. 440.02 or the date termination has occurred as defined in s. 121.021(39). The employer of record at the time of the worker's compensation injury or illness shall make the required employee and employer retirement contributions based on the member's rate of monthly compensation immediately prior to his or her receiving workers' compensation payments.

History.—s. 6, ch. 19014, 1939; CGL 1940 Supp. 892(161); s. 3, ch. 20749, 1941; s. 3, ch. 22062, 1943; s. 3, ch. 22693, 1945; s. 3, ch. 23864, 1947; s. 7, ch. 24337, 1947; s. 3, ch. 25398, 1949; s. 2, ch. 28196, 1953; ss. 4, 5, ch. 29942, 1955; s. 1, ch. 29913, 1955; s. 1, ch. 59-481; s. 3, ch. 63-554; ss. 31, 35, ch. 69-106; s. 1, ch. 69-109; s. 1, ch. 71-260; s. 5, ch. 72-347; s. 1, ch. 73-326; s. 65, ch. 79-40; s. 16, ch. 80-295; s. 3, ch. 87-19; s. 16, ch. 92-122; s. 9, ch. 95-148; s. 1, ch. 99-13; s. 9, ch. 2002-194.

238.07 Regular benefits; survivor benefits.—

(1) If any member retires and before his or her death fails to select one of the optional benefits set forth in s. 238.08, the member's executors or administrators shall receive the excess of his or her accumulated contributions at retirement over the total of all annuity payments made to the member.

(2) The provisions for the retirement of a member are as follows:

(a) To retire at the age of 60 upon the basis of a standard of service of 35 years (this provision shall be known and referred to throughout this chapter as plan A); or

(b) To retire at the age of 55 upon the basis of a standard of service of 35 years (this provision shall be known and referred to throughout this chapter as plan B); or

(c) To retire at the age of 55 upon the basis of a standard of service of 30 years (this provision shall be known and referred to throughout this chapter as plan C); or

(d) To retire after 25 years of service upon the basis of a standard of service of 25 years provided the member has reached age 50; provided, further, however, that a member electing to retire under this provision shall not be eligible to receive the benefits allowed by subsection (8) and paragraph (11)(f) (this provision shall be known and referred to throughout this chapter as plan D); or

(e) To retire:

1. At normal retirement age which shall be age 60 for those persons whose membership date, or last renewal thereof, occurred prior to July 1, 1963, and age 62 for those persons whose membership date, or last renewal thereof, occurred on or after July 1, 1963; or

2. Prior to normal retirement age but at or subsequent to age 55, provided that upon such date the member has completed 10 years of creditable service, which shall be the early retirement age; or

3. Subsequent to normal retirement age, which shall be the delayed retirement age; (this provision shall be known and referred to throughout this chapter as plan E); or

(f) Notwithstanding any provision of this chapter to the contrary, effective January 1, 1993, the normal retirement age for a member under this chapter is attained upon the member's completion of 30 years of creditable service in the aggregate.

The manner and time of selecting a plan of retirement are set out elsewhere in this chapter.

(3) Any member who, prior to July 1, 1955, elected to retire under one of plans A, B, C, or D may elect, prior to retirement, to retire under plan E in accordance with the terms hereof. Any person who became a member on or after July 1, 1955, shall retire under plan E, except as provided for under s. 238.31. With respect to plans A, B, C, or D, any member shall have the right at any time to change to a plan of retirement requiring a lower rate of contribution. The Department of Management Services shall also notify the member of the rate of contribution such member must make from and after selecting such plan of retirement. Any member in service may retire upon reaching the age of retirement formerly selected by him or her, upon the member's written application to the department setting forth at which time, not more than 90 days subsequent to the execution and filing of such application, it is his or her desire to retire notwithstanding that during such period of notification he or she may have separated from service. Upon receipt of such application for retirement, the department shall retire such member not more than 90 days thereafter. Before such member may retire he or she must file with the department his or her written selection of one of the optional benefits provided in s. 238.08.

(4) Upon service retirement under plans A and B, a member shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of his or her retirement; and

(b) A pension, in addition to this annuity, of one one-hundred-fortieth of the member's average final compensation, multiplied by the number of his or her years of membership service since he or she last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of one-seventieth of his or her average final compensation, multiplied by the number of years of service certified on his or her prior service certificate.

(5) Upon service retirement under plan C a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of his or her retirement; and

(b) A pension, in addition to the member's annuity of one one-hundred-twentieth of his or her average final compensation, multiplied by the number of years of membership service since he or she last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of

one-sixtieth of his or her average final compensation, multiplied by the number of years of service certified on his or her prior service certificate.

(6) Upon service retirement under plan D, a member shall receive a service retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of his or her retirement; and

(b) A pension, in addition to the member's annuity, of one one-hundredth of his or her average final compensation multiplied by the number of his or her years of membership service since he or she last became a member; and

(c) If the member has a prior service certificate in full force and effect, an additional pension of one-fiftieth of his or her average final compensation multiplied by the number of years of service certified on his or her prior service certificate.

(7) Upon service retirement under plan E, a member shall receive a service retirement allowance which shall be determined as follows:

(a) At normal retirement age: Two percent of his or her average final compensation multiplied by the number of years of creditable service.

(b) At early retirement age: Two percent of his or her average final compensation multiplied by the number of years of creditable service and adjusted for actuarial equivalents based on completed months by which early retirement precedes normal retirement as provided in paragraph (2)(e).

(c) At delayed retirement age: Two percent of his or her average final compensation multiplied by the number of years of creditable service.

(8) Any member who has heretofore, or who hereafter, retires after 30 years of creditable service shall receive a retirement allowance of not less than \$100 per month, provided, however that with respect to plans A, B, or C, any person with less than 30 but with 10 or more years of service shall be entitled to a service retirement allowance which shall be computed on the basis of an average final compensation of \$2,400 per year and shall receive a retirement allowance which shall be the equivalent of one-sixtieth of said average final compensation multiplied by the number of years of his or her creditable service; provided that in no event shall such a member receive a retirement allowance greater than \$100 per month.

(9) Any member who has taught, or who teaches in the public free schools of Florida for not less than an aggregate of 10 years and withdraws or has withdrawn from the system, may elect to leave his or her accumulated contributions in the system or to repay his or her withdrawn accumulations to the system, and upon reaching retirement age, the member shall receive a retirement allowance based on the number of years of service which he or she taught in the public

schools of Florida before retirement, provided, that a person who has lost his or her membership and later returns to service shall be allowed the privilege of having credit restored for previous service if he or she returns to full-time teaching service and renders 3 additional years of continuous service.

(10) Any member in service, who has 10 or more years of creditable service, may upon the application of his or her employer or upon his or her own application, be retired by the department not less than 30 nor more than 90 days next following the date of filing such application, on a disability retirement allowance; provided that a physician licensed by this state examines and certifies that such member is mentally or physically incapacitated for the further performance of duty, that such incapacity is likely to be permanent, and that such member should be retired, and the department concurs. In making the determination, the department may require other evidence of disability as deemed appropriate.

(11) Upon retirement on account of disability, a member shall be paid his or her service retirement allowance if he or she is eligible for a service retirement allowance; otherwise, the member shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of retirement; and

(b) If the member is making contributions for retirement under plan A or B, he or she shall receive a pension which, together with his or her annuity shall provide a total retirement allowance equal to one-seventieth of his or her average final compensation multiplied by the number of years of service creditable to him or her at retirement, if such retirement allowance exceeds 25 percent of the member's average final compensation; or if such retirement allowance does not exceed 25 percent of the member's average final compensation, a pension shall be payable which, together with his or her annuity, shall provide a total retirement allowance of 25 percent of his or her average final compensation; provided, however that no retirement allowance shall exceed one-seventieth of his or her average final compensation, multiplied by the number of years of total service which would be credited to the member were his or her service continued to the minimum age for service retirement.

(c) If the member is making contributions for retirement under plan C, he or she shall receive a pension which, together with his or her annuity, shall provide a total retirement allowance equal to one-sixtieth of his or her average final compensation multiplied by the number of years of service creditable to him or her at retirement, if such retirement allowance exceeds 25 percent of the member's average final compensation; or if such retirement allowance does not exceed 25 percent of the member's average final

compensation, a pension shall be payable which, together with his or her annuity, shall provide a total retirement allowance of 25 percent of his or her average final compensation; provided, however that no retirement allowance shall exceed one-sixtieth of his or her average final compensation multiplied by the number of years of total service which would be credited to the member were his or her service continued to the minimum age for service retirement.

(d) If the member is making contributions for retirement under plan D, he or she shall receive a pension, which together with his or her annuity shall provide a total retirement allowance equal to one-fiftieth of his or her average final compensation multiplied by the number of years of service creditable to him or her at retirement, if such retirement allowance exceeds 25 percent of the member's average final compensation; or if such retirement allowance does not exceed 25 percent of the member's average final compensation, a pension shall be payable which, together with his or her annuity, shall provide a total retirement allowance of 25 percent of his or her average final compensation, provided, however that no retirement allowance shall exceed one-fiftieth of his or her average final compensation multiplied by the number of years of total service which would be creditable to the member were his or her service continued to the minimum age of service retirement; provided, however that when a member has taught the standard number of years required for retirement under any of the several retirement plans provided by this section and elected by such member, and such member shall retire on account of disability prior to attainment of the minimum required age under the plan elected, then such member so retired shall receive the same benefits as if he or she had retired on service retirement under the plan elected.

(e) If the member is making contributions for retirement under plan E, he or she shall receive a retirement allowance which shall consist of 100 percent of the retirement allowance to which he or she would be entitled if his or her date of disability retirement were his or her otherwise normal retirement date; provided, however that the retirement allowance payable upon disability retirement shall not be less than the 25 percent of average final compensation nor, if disability retirement occurs prior to the date on which the member is first eligible for service retirement, shall it be greater than the service retirement allowance to which the member would be entitled if he or she continued in active service to such date at the same rate of compensation effective on the date of disability retirement.

(f) With respect to plans A, B, or C, the average final compensation under this subsection shall be computed on the actual average final compensation, or

upon the basis of an average final compensation of \$2,400 per year, whichever is the greater.

(g) Notwithstanding the minimum disability retirement allowance set out in paragraphs (a) through (f), any member who retired prior to July 1, 1957, on account of disability, shall, on and after July 1, 1957, receive as a minimum disability retirement allowance \$75 per month, or an annual sum equal to 40 multiplied by the number of years of his or her creditable service whichever is the greater, and any person who retires on and after July 1, 1957, shall, from the date of his or her retirement, receive as a minimum disability retirement allowance \$75 per month, or an annual sum equal to 40 multiplied by the number of years of creditable service, whichever is the greater.

(h) Notwithstanding any other provision of this section, a member who has attained normal retirement age and is retiring on account of disability shall be eligible to receive a minimum of 25 percent of his or her average final compensation under Option 1.

(12)(a) Once each year during the first 5 years following the retirement of a member on a disability retirement allowance, and once in every 3-year period thereafter, the department may require any disability beneficiary who has not yet attained his or her minimum service retirement age to undergo a medical examination by a physician licensed by this state and to submit any other evidence of disability as required by the department. Should a disability beneficiary who has not yet attained his or her minimum service retirement age refuse to submit to any such medical examination, his or her retirement allowance shall be discontinued until his or her withdrawal of such refusal, and should such refusal continue for 1 year, all of the disability beneficiary's rights in and to his or her pension shall be forfeited.

(b) If the department finds that a disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his or her disability retirement allowance and his or her average final compensation, the amount of the beneficiary's pension shall be reduced to an amount which, together with his or her annuity and the amount earnable by him or her, shall equal the amount of his or her average final compensation. Should the beneficiary's earning capacity later be changed, the amount of his or her pension may be further modified; provided that the pension so modified shall not exceed the amount of the pension allowable under subsection (11), at the time of retirement, nor an amount which, when added to the amount earnable by the beneficiary, together with his or her annuity, equals the amount of his or her average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he or she was retired shall not become a member of the retirement system at that time.

(c) Should a disability beneficiary under his or her minimum service retirement age be at any time in service at a salary equal to or greater than his or her average final compensation upon the basis of which he or she was retired, the beneficiary's disability retirement allowance shall cease and he or she shall again become a member of the retirement system and shall contribute thereafter at the same rate at which he or she paid prior to disability. Any prior service certificate, on the basis of which his or her allowance was computed at the time of his or her disability retirement, shall be restored to full force and effect; and, in addition, upon his or her subsequent retirement he or she shall be credited with all his or her membership service on the basis of which his or her allowance was computed at the time of his or her disability retirement.

(13) Should a member cease to be a teacher except by death or by retirement under the provisions of this chapter, the member shall be paid the amount of his or her accumulated contributions. Should a member die before retirement, the amount of his or her accumulated contributions shall be paid to such person, if any, as he or she shall have nominated by written designation duly executed and filed with the department; otherwise, to his or her executors or administrators.

(14) Any member who retires on or after July 1, 1954, who at the time of his or her retirement has not served as a teacher in Florida for 10 years shall not be eligible to receive and shall not be paid any service retirement allowance.

(15) Any member of the Teachers' Retirement System who has heretofore, or who hereafter, retires and who has passed his or her 65th birthday and whose retirement allowance is less than \$150 shall have his or her retirement allowance redetermined and shall be entitled to a service retirement allowance which shall be computed on the basis of an average final compensation of \$2,400 per year and shall receive a retirement allowance which shall be the equivalent of one-sixtieth of said average final compensation multiplied by the number of years of his or her creditable service; provided, that in no event shall such redetermination entitle the member to receive a retirement allowance greater than \$150.

(16)(a) Any member of the Teachers' Retirement System who has heretofore, or who hereafter, retires with no less than 10 years of creditable service and who has passed his or her 65th birthday, may, upon application to the department, have his or her retirement allowance redetermined and thereupon shall be entitled to a monthly service retirement allowance which shall be equal to \$4 multiplied by the number of years of the member's creditable service which shall be payable monthly during his or her retirement; provided, that the amount of retirement allowance as

determined hereunder, shall be reduced by an amount equal to:

1. Any social security benefits received by the member, and

2. Any social security benefits that the member is eligible to receive by reason of his or her own right or through his or her spouse.

(b) No payment shall be made to a member of the Teachers' Retirement System under this act, until the department has determined the social security status of such member.

(c) Eligibility of a member of the Teachers' Retirement System shall be determined under the social security laws and regulations; provided, however, that a member shall be considered eligible if the member or the member's spouse has reached 65 years of age and would draw social security if the member or the member's spouse were not engaged in activity that results in the member or the member's spouse receiving income that would make him or her ineligible to receive social security benefits. A member of the Teachers' Retirement System shall be deemed to be eligible for social security benefits if the member has this eligibility in his or her own right or through his or her spouse.

(d) The department shall review, at least annually, the social security status of all members of the Teachers' Retirement System receiving payment under this act and shall increase or decrease payments to such members as shall be necessary to carry out the intent of this act.

(e) No member of the Teachers' Retirement System shall have his or her retirement allowance reduced or any of his or her rights impaired by reason of this act.

(f) This subsection shall take effect on January 1, 1962.

(17) If the member recovers from disability, has his or her disability benefit terminated, reenters covered employment, and is continuously employed for a minimum of 1 year of creditable service, he or she may claim as creditable service the months during which he or she was receiving a disability benefit, upon payment of the required contributions. Contributions shall equal the total required employee and employer contribution rate during the period the retiree received retirement benefits, multiplied times his or her rate of monthly compensation prior to the commencement of disability retirement for each month of the period claimed, plus 4 percent interest until July 1, 1975, and 6.5 percent interest thereafter on such contributions, compounded annually each June 30 to the date of payment. If the member does not claim credit for all of the months he or she received disability benefits, the months claimed must be his or her most recent months of retirement.

(18)(a) Definitions under survivor benefits are:

1. A dependent is a child, widow, widower, or parent of the deceased member who was receiving not less than one-half of his or her support from the deceased member at the time of the death of such member.

2. A child is a natural or legally adopted child of a member, who:

- a. Is under 18 years of age, or
- b. Is over 18 years of age but not over 22 years of age and is enrolled as a student in an accredited educational institution, or
- c. Is 18 years of age or older and is physically or mentally incapable of self-support, when such mental and physical incapacity occurred prior to such child obtaining the age of 18 years. Such person shall cease to be regarded as a child upon the termination of such physical or mental disability. The determination as to such physical or mental incapability shall be vested in the department.

No person shall be considered a child who has married or, except as provided in sub-subparagraph 2.b. or as to a child who is physically or mentally incapable of self-support as hereinbefore set forth, has become 18 years of age.

3. A parent is a natural parent of a member and includes a lawful spouse of a natural parent.

4. A beneficiary is a person who is entitled to benefits under this subsection by reason of his or her relation to a deceased member during the lifetime of such member.

(b) In addition to all other benefits to which a member shall, subject to the conditions set out below, be entitled, the beneficiary of such member shall, upon the death of such member, receive the following benefits:

Minimum period of paid service of member in Florida as regular full-time teacher	Beneficiaries of deceased member	Benefits
1. One calendar day	Widow or widower who has care of dependent child or children of deceased member.	\$190 per month for one child. \$250 per month if more than one child, maximum benefits \$250 per month.
2. One calendar day	One or more dependent children if there is no surviving widow or widower.	\$190 per month per child; maximum benefits \$250 per month if more than one child.

3. One calendar day	Dependent parents 65 years or older.	For each parent, \$100 per month for life.
4. One calendar day	Designated beneficiary and, if no designated beneficiary, then the executor or administrator of deceased member.	\$500 lump-sum death benefits payable only once.
5. One calendar day	Dependent widow or widower 50 years of age and less than 65 years of age.	\$150 per month for life.
6. Ten years	Widow or widower 65 years of age or older.	\$175 per month for life.
7. Retired member	Designated beneficiary and if no designated beneficiary, then the executor or administrator of deceased retired member.	\$500 lump-sum death benefits payable only once.

Beginning on July 1, 1971, the lump-sum death benefit, provided in item 7 above for the retired teacher, shall apply to all present and future retirees of the systems.

(c) The payment of survivor benefits shall begin as of the month immediately following the death of the member except where the beneficiary has not reached the age required to receive benefits under paragraph (b), in which event the payment of survivor benefits shall begin as of the month immediately following the month in which the beneficiary reaches the required age. Provided that if death occurs during the first 3 years of employment, the payment of survivor benefits shall be reduced by the amount of monthly benefits the member's survivors are entitled to receive under federal social security as either a survivor of the member or as a covered worker under federal social security.

(d) Limitations on rights of beneficiary are:

1. The person named as beneficiary in paragraph (b) shall, in no event, be entitled to receive the benefits set out in such paragraph unless the death of the member under whom such beneficiary claims occurs within the period of time after the member has served in Florida as follows:

Minimum number of years
of service in Florida

3 to 5	2 years
6 to 9	5 years
10 or more	10 years

2. Upon the death of a member, the department shall make a determination of the beneficiary or beneficiaries of the deceased member and shall pay survivor benefits to such beneficiary or beneficiaries beginning 1 month immediately following the death of the member except where the beneficiary has not reached the age required to receive benefits under paragraph (b), in which event the payment of survivor benefits shall begin as of the month immediately following the month in which the beneficiary reaches the required age. When required by the department, the beneficiary or beneficiaries shall file an application for survivor benefits upon forms prescribed by the department.

3. The beneficiaries of a member to receive survivor benefits are fixed by this subsection, and a member may not buy or otherwise change such benefits. He or she may, however, designate the beneficiary to receive the \$500 death benefits. If a member fails to make this designation, the \$500 death benefits shall be paid to his or her executor or administrator.

4. The beneficiary or beneficiaries of a member whose death occurs while he or she is in service or while he or she is receiving a disability allowance under subsection (11), shall receive survivor benefits under this subsection determined by the years of service in Florida of the deceased member as set out in paragraph (b). The requirement that the death of a member must occur within a certain period of time after service in Florida as set out in subparagraph (d)1. shall not apply to a member receiving a disability benefit at the time of his or her death.

(19) Any person who hereafter elects to receive retirement benefits under s. 112.05 shall not be entitled to the retirement benefits of this chapter except for the refund of his or her accumulated contributions as provided in subsection (13); likewise any person who elects to receive retirement benefits under this chapter shall thereby become ineligible to receive retirement benefits under s. 112.05.

History.—s. 7, ch. 19014, 1939; CGL 1940 Supp. 892(162); s. 4, ch. 22693, 1945; s. 4, ch. 23864, 1947; s. 11, ch. 25035, 1949; s. 4, ch. 25398, 1949; s. 1, ch. 28110, 1953; s. 3, ch. 28196, 1953; s. 6, ch. 29942, 1955; ss. 2, 4, 5, ch. 57-357; s. 2, ch. 61-301; ss. 1, 2, 3, 4, 5, 6, ch. 61-333; ss. 2, 3, 4, 5, ch. 61-458; ss. 4, 5, 7, 12, ch. 63-554; ss. 1, 2, ch. 65-552; s. 1, ch. 67-557; ss. 31, 35, ch. 69-106; s. 1, ch. 69-189; s. 1, ch. 70-125; s. 1, ch. 70-998; s. 1, ch. 71-198; s. 2, ch. 71-260; s. 1, ch. 71-347; s. 1, ch. 72-343; s. 1, ch. 73-326; s. 1, ch. 76-225; s. 14, ch. 80-295; s. 6, ch. 86-180; s. 4, ch. 87-19; s. 17, ch. 92-122; s. 3, ch. 92-139; s. 10, ch. 95-148; s. 77, ch. 99-255; s. 35, ch. 2010-5.

238.071 Social security benefits; determination of retirement allowance.—Any member of the Teachers' Retirement System who has heretofore or who hereafter retires and has his or her retirement allowance redetermined under the provisions of s. 238.07(16), shall not after July 1, 1969, have the amount of the redetermined retirement allowance reduced because of social security benefits received by the member or his or her spouse.

History.—s. 1, ch. 69-47; s. 11, ch. 95-148; s. 36, ch. 2010-5.

238.072 Special service provisions for extension personnel.—All state and county cooperative extension personnel holding appointments by the United States Department of Agriculture for extension work in agriculture and home economics in this state who are joint representatives of the University of Florida and the United States Department of Agriculture, as provided in s. 121.051(7), who are members of the Teachers' Retirement System, chapter 238, and who are prohibited from transferring to and participating in the Florida Retirement System, chapter 121, may retire with full benefits upon completion of 30 years of creditable service and shall be considered to have attained normal retirement age under this chapter, any law to the contrary notwithstanding. In order to comply with the provisions of s. 14, Art. X of the State Constitution, any liability accruing to the Florida Retirement System Trust Fund as a result of the provisions of this section shall be paid on an annual basis from the General Revenue Fund.

History.—s. 1, ch. 79-169.

238.08 Optional benefits.—A member may elect to receive his or her benefits under the terms of this chapter according to the provisions of any one of the following options:

(1) Option one. A member may elect to receive his or her benefits in a retirement allowance payable throughout his or her life.

(2) Option two. A member may elect to receive on retirement the actuarial equivalent (at that time) of his or her retirement allowance in a reduced retirement allowance payable throughout life, with the provisions that if the member dies before he or she has received in payment of his or her annuity the amount of his or her accumulated contributions, as they were at the time of his or her retirement, the balance shall be paid to such person, if any, as he or she shall nominate by written designation duly acknowledged and filed with the department; otherwise, to his or her executors or administrators.

(3) Option three. A member may elect at any time prior to receipt of his or her first monthly installment of retirement compensation, to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw such reduced

retirement compensation so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable.

(4) Option four. A member may elect at any time prior to receipt of his or her first monthly installment of retirement compensation, to receive a reduced retirement compensation with the provision that the surviving spouse shall continue to draw one-half of such reduced retirement compensation so long as he or she shall live. The amount of such reduced retirement compensation shall be the actuarial equivalent of the amount of such retirement otherwise payable.

(5)(a) If a member continues in service beyond the date he or she is first eligible for service retirement and does not, prior to his or her death, elect Option three or Option four, his or her spouse may, at the option of the spouse, receive either the accumulated contributions of the member at date of death or the reduced retirement compensation to which the beneficiary would have been entitled under Option three, calculated on the assumption that the member retired on his or her date of death and died immediately subsequent thereto; provided that the spouse of any member who died between July 1, 1955, and June 30, 1957, both dates inclusive, is entitled to full benefits under this subsection, and further provided that for all persons who become members of the system on or after July 1, 1963, the amount of such retirement allowance otherwise payable to the member at his or her date of death shall be determined on the basis of his or her normal retirement age as defined in s. 238.07.

(b) A member who elects Option three or Option four shall, on a form provided for that purpose, designate his or her spouse as beneficiary to receive the benefits which continue to be payable upon the death of the member. After such benefits have commenced under Option three or Option four, the retired member may change the designation of his or her spouse as beneficiary only twice. If such a retired member remarries and wishes to make such a change, he or she may do so by filing with the department a notarized change of spouse designation form and shall notify the former spouse in writing of such change. Upon receipt of a completed change of spouse designation form, the department shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit. The consent of a retired member's formerly designated spouse as beneficiary to any such change shall not be required.

(6) Notwithstanding any provision in this chapter to the contrary, the following provisions shall apply to

any member of the retirement system who has accumulated at least 10 years of service and dies prior to retirement:

(a) If the deceased member's surviving spouse has previously received a refund of the member's accumulated contributions made to the retirement system, such spouse may pay to the department an amount equal to the sum of the amount of the deceased member's contributions previously refunded and regular interest compounded annually on the amount of such refunded contributions from the date of refund to the date of payment to the department, and by so doing be entitled to receive the monthly retirement benefit provided in paragraph (c).

(b) If the deceased member's surviving spouse has not received a refund of the deceased member's accumulated contributions, such spouse shall, upon application to the department within 30 days of the death of the member, receive the monthly retirement benefit provided in paragraph (c).

(c) The monthly benefit payable to the spouse described in paragraph (a) or paragraph (b) shall be the amount which would have been payable to the deceased member's spouse, assuming that the member retired on the date of his or her death and had selected the option in subsection (3), such benefit to be based on the ages of the spouse and member as of the date of death of the member. The benefit shall commence on the first day of the month following the payment of the aforesaid amount to the department, if paragraph (a) is applicable, or on the first day of the month following the receipt of the spouse's application by the department, if paragraph (b) is applicable.

(7) The surviving spouse or other dependent of any member whose employment is terminated by death shall, upon application to the department, be permitted to pay the required contributions for any service performed by the member which could have been claimed by the member at the time of his or her death. Such service shall be added to the creditable service of the member and shall be used in the calculation of any benefits which may be payable to the surviving spouse or other surviving dependent.

(8) Upon the death of a retired member or beneficiary who is receiving monthly benefits under this chapter, the monthly benefits shall be paid through the last day of the month of death and shall terminate, or be adjusted, if applicable, as of that date in accordance with the optional form of benefit selected at the time of retirement.

History.—s. 8, ch. 19014, 1939; CGL 1940 Supp. 892(163); s. 7, ch. 22858, 1945; s. 4, ch. 28196, 1953; s. 7, ch. 29942, 1955; s. 3, ch. 57-357; s. 8, ch. 63-554; s. 3, ch. 65-552; ss. 31, 35, ch. 69-106; s. 1, ch. 69-110; s. 1, ch. 70-182; s. 4, ch. 72-334; s. 3, ch. 72-345; s. 1, ch. 73-326; s. 7, ch. 80-130; s. 10, ch. 85-246; s. 96, ch. 92-279; s. 55, ch. 92-326; s. 12, ch. 95-148; s. 78, ch. 99-255.

238.09 Method of financing.—All of the assets of the retirement system shall be credited, according to the purposes for which they are held, to one of four funds; namely, the Annuity Savings Trust Fund, the Pension Accumulation Trust Fund, the Expense Trust Fund, and the Survivors' Benefit Trust Fund.

(1) The Annuity Savings Trust Fund shall be a fund in which shall be accumulated contributions made from the salaries of members under the provisions of paragraph (c) or paragraph (f). Contribution to, payments from, the Annuity Savings Trust Fund shall be made as follows:

(a) With respect to plan A, B, C, or D, upon the basis of such tables as the Department of Management Services shall adopt, and regular interest, the actuary of the retirement system shall determine for each member the proportion of earnable compensation which, when deducted from each payment of his or her prospective earnable annual compensation prior to his or her minimum service retirement age, and accumulated at regular interest until such age, shall be computed to provide at such age:

1. An annuity equal to one one-hundred-fortieth of his or her average final compensation multiplied by the number of his or her years of membership in the case of each member electing to retire under the provisions of plan A or B.

2. An annuity equal to one one-hundred-twentieth of his or her average final compensation multiplied by the number of his or her years of membership service in the case of each member electing to retire under the provisions of plan C.

3. An annuity equal to one one-hundredth of his or her average final compensation multiplied by the number of his or her years of membership service in the case of each member electing to retire under the provisions of plan D.

In the case of any member who has attained his or her minimum service retirement age prior to becoming a member, the proportion of salary applicable to such member, with respect to plan A, B, C, or D, shall be the proportion computed for the age 1 year younger than his or her minimum service retirement age.

(b) A member under plan E shall make contribution to the fund of 6 percent of his or her earnable compensation.

(c) The department shall certify to each employer the proportion of the earnable compensation of each member who is compensated by the employer, and the employer shall cause to be deducted from the salary of each member on each and every payroll for each and every payroll period an amount equal to the proportion of the member's earnable compensation so computed. With respect to plan A, B, C, or D, the employer shall not make any deduction for annuity purposes from the

compensation of a member who has attained the age of 60 years, if such member elects not to contribute.

(d) In determining the amount earnable by a member in a payroll period, the department may consider the rate of compensation payable to such member on the first day of the payroll period as continuing throughout such payroll period, and it may omit deductions from compensation for any period less than a full payroll period if a teacher was not a member on the first day of the payroll period, and to facilitate the making of deductions, it may modify any deduction required of any member by such an amount as shall not exceed one-tenth of 1 percent of the annual salary from which said deduction is to be made.

(e) The deductions provided for herein shall be made, notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for herein, and shall receipt in full for his or her salary or compensation; and payment of salary or compensation, less said deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except as to the benefits provided by this chapter.

(f) In addition to the deduction from salary, as hereinbefore required, any member may, with respect to plan A, B, C, or D, subject to the approval of the division, redeposit in the Annuity Savings Trust Fund, by a single payment or by an increased rate of contribution an amount equal to the total amount which he or she previously withdrew therefrom, as provided in this chapter, or any part thereof; or any member may deposit in the Annuity Savings Trust Fund, by a single payment or by an increased rate of contribution, amounts for the purchase of an additional annuity, but such additional payments shall not exceed the amount computed to provide, with his or her prospective retirement allowance, a total retirement allowance of one-half of his or her prospective average final compensation at his or her minimum service retirement age. Such additional amounts so deposited shall become a part of his or her accumulated contributions, except that in the case of disability retirement they shall be treated as excess contributions returnable to the member in cash or as an annuity of equivalent actuarial value and shall not be considered in computing his or her pension.

(g) A member who elects to retire under plan E shall pay to the Annuity Savings Trust Fund prior to retirement or receive from the Annuity Savings Trust Fund, as the case may be, the difference between what his or her contributions, with accumulated interest, would have been under plan E and the actual contributions of the member with accumulated interest.

(h) The accumulated contributions of a member returned to him or her upon withdrawal, or paid as provided in this chapter to his or her designated beneficiary, or to his or her executors or administrators in the event of his or her death, shall be paid from the Annuity Savings Trust Fund.

(i) Upon the retirement of a member, his or her accumulated contributions shall be transferred from the Annuity Savings Trust Fund to the Pension Accumulation Trust Fund.

(2) Should a beneficiary, retired on account of disability, again become a member of the retirement system, his or her accumulated contributions as of the date of retirement not paid as an annuity, shall be transferred from the Pension Accumulation Trust Fund to the Annuity Savings Trust Fund and credited to his or her individual account in the Annuity Savings Trust Fund.

(3) The Pension Accumulation Trust Fund shall be the fund in which shall be accumulated all reserves for the payment of all annuities or benefits in lieu of annuities on retired members and all pensions and other benefits payable from contributions made by the members and by the employers, from which annuities, pensions and benefits in lieu thereof shall be paid. Contributions to, and payments from, the Pension Accumulation Trust Fund, other than as set forth in subsections (2) and (3) herein, shall be made as follows:

(a) On account of each member there shall be paid annually into the Pension Accumulation Trust Fund, as provided for in s. 238.11, on account of the preceding year a certain percentage of his or her earnable compensation, to be known as the normal contribution, and an additional percentage of his or her earnable compensation, to be known as the accrued liability contribution. The rates percent of earnable compensation of such contributions shall be fixed on the basis of the liabilities of the retirement system, as shown by actuarial valuation.

(b) On the basis of regular interest and of such mortality and other tables as shall be adopted by the department, the actuary engaged by the department to make each valuation required by this chapter shall, during the period over which the accrued liability contribution is payable, determine, immediately after making such valuation, the uniform and constant percentage of the earnable compensation of the average new entrant, which, if contributed on the basis of his or her compensation throughout his or her entire period of service, would be sufficient to provide for the payment of any pension payable by the state on his or her account. The rate percent so determined shall be known as the normal contribution rate. After the accrued liability contribution has ceased to be payable, the normal contribution rate shall be the rate percent of the earnable compensation of all members, obtained

by deducting from the total liabilities of the Pension Accumulation Trust Fund the amount of the funds in hand to the credit of that fund and dividing the remainder by 1 percent of the present value of the prospective future salaries of all members as computed on the basis of the mortality and service tables adopted by the department and on the basis of regular interest. The normal rate of contribution shall be determined and certified to the department by the actuary after each valuation and shall continue in force until a new valuation and certification are made.

(c) Immediately succeeding the first valuation, the actuary engaged by the department shall compute the rate percent of the total earnable compensation of all members which is equivalent to 4 percent of the amount of the total liability for pensions on account of all members and beneficiaries and not dischargeable by the present assets of the Pension Accumulation Trust Fund and by the aforesaid normal contribution if made on account of such members during the remainder of their active service. The rate percent, originally so determined, shall be known as the accrued liability contribution rate.

(d) The total amount payable in each year into the Pension Accumulation Trust Fund shall be not less than the sum of the rates percent known as the normal contribution rate and the accrued liability contribution rate, of the total earnable compensation of all members during the preceding year; provided, however that the amount of each annual accrued liability contribution shall be at least 3 percent greater than the preceding annual accrued liability contribution; and provided that the aggregate payment into the Pension Accumulation Trust Fund shall be sufficient, when combined with the amount then held in the fund, to provide the benefits payable from the fund during the current year.

(e) The accrued liability contribution shall be discontinued as soon as the accumulated reserve in the Pension Accumulation Trust Fund shall equal the present value, as actuarially computed and approved by the department, of the total liability of such fund less the present value, computed on the basis of the normal contribution rate, then in force of the prospective normal contributions to be received on account of persons who are at that time members.

(4) The Expense Trust Fund shall be the fund to which shall be credited all moneys contributed for the administrative expenses of the retirement system and from which shall be paid all expenses incurred in connection with the administration and operation of the retirement system. Contribution to the Expense Trust Fund shall be made by transfer from interest earnings on investments in the Annuity Savings Trust Fund. Such transfers shall be regulated by the Legislature pursuant to budgets filed in accordance with the provisions of chapter 216.

(5)(a) The survivors' benefit fund shall be the fund in which shall be accumulated all reserves for the payment of all survivor benefits provided for in s. 238.07(18), except refund of accumulated contributions. There shall be paid into this fund:

1. All contributions by members based on the rate of twenty-five-hundredths percent of their salary as set out in paragraph (b) of this subsection.

2. All contributions by the state to the Survivors' Benefit Trust Fund.

3. All transfers from other funds as required by this subsection.

(b) The department shall annually certify to each employer, at the time it makes the certification to the employer under paragraph (1)(c), the rate of twenty-five-hundredths percent to be applied by the employer to the salary of each member who is compensated by the employer, and the employer shall cause to be deducted from the salary of each member on each and every payroll for each and every payroll period an amount equal to twenty-five-hundredths percent of the member's salary paid by the employer and the employer shall remit monthly such deducted amounts to the department which shall place the same in the Survivors' Benefit Trust Fund of the Teachers' Retirement System of the state. The amount of contributions by a member to the Survivors' Benefit Trust Fund shall, in no event, be refundable to the member or his or her beneficiaries.

(c) Beginning July 1, 1959, there shall be paid annually into the Survivors' Benefit Trust Fund by the state on account of the preceding year a sum equal to the total amount paid into such fund by the members of the Teachers' Retirement System of the state.

(d) A member who makes contributions to the Survivors' Benefit Trust Fund shall not thereby obtain, prior to July 1, 1959, any vested interest or right to the benefits under s. 238.07(18), and these benefits may be altered, changed or repealed by the Legislature at its 1959 session, provided that the beneficiaries of members whose deaths occur prior to July 1, 1959, shall have a vested interest in the benefits accruing to such beneficiaries under s. 238.07(18), and these rights may not be altered, changed nor repealed by the Legislature.

History.—s. 9, ch. 19014, 1939; CGL 1940 Supp. 892(164); s. 5, ch. 22693, 1945; s. 7, ch. 22858, 1945; s. 5, ch. 23864, 1947; s. 11, ch. 25035, 1949; s. 8, ch. 29942, 1955; s. 6, ch. 57-357; s. 1, ch. 59-330; s. 2, ch. 61-119; s. 3, ch. 61-301; s. 6, ch. 63-554; ss. 31, 35, ch. 69-106; s. 3, ch. 72-345; s. 1, ch. 73-326; s. 53, ch. 79-164; s. 13, ch. 95-148; s. 79, ch. 99-255; s. 37, ch. 2010-5.

238.10 Management of funds.—The Department of Management Services, annually, shall allow regular interest on the amount for the preceding year to the credit of each of the funds of the retirement system, and to the credit of the individual account therein, if any, with the exception of the expense fund,

from the interest and dividends earned from investments.

History.—s. 10, ch. 19014, 1939; CGL 1940 Supp. 892(165); s. 4, ch. 20749, 1941; s. 15, ch. 21989, 1943; s. 1, ch. 26963, 1951; s. 9, ch. 29942, 1955; s. 6, ch. 61-458; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326; s. 80, ch. 99-255.

238.11 Collection of contributions.—

(1) The collection of contributions shall be as follows:

(a) Each employer shall cause to be deducted from each and every payment of salary of a member, for each and every payroll period, the contribution payable by such member as provided in this chapter. Commencing July 1, 1967, each employer shall also budget and set aside an amount equal to such deductions, plus, commencing January 1, 1993, an additional 3.99 percent of each payment of salary of a member, which shall be the employer contribution, except with respect to any nonprofit professional association or corporation of teachers for which the employer contribution shall be at least that amount specified in s. 238.09(3)(a); provided that such amount shall be set aside only if the state makes available to the employer, except for any nonprofit professional association or corporation, the additional funds necessary for such employer contributions.

(b) Each employer shall transmit monthly to the Department of Management Services a warrant for the total amount of such deductions. Each employer shall also transmit monthly to the department a warrant for such employer contribution set aside as provided for in paragraph (a) of this subsection. The department, after making records of all such warrants, shall transmit them to the Department of Financial Services for delivery to the Chief Financial Officer, who shall collect them.

(c) The state contribution shall be equal to the excess of the contributions specified under s. 238.09, over the amounts the state makes available for employer contributions under paragraphs (a) and (b) of this subsection.

(2) The collection of the state contribution shall be made as follows:

(a) The amounts required to be paid by the state into the Teachers' Retirement System in this chapter shall be provided therefor in the General Appropriations Act. However, in the event a sufficient amount is not included in the General Appropriations Act to meet the full amount needed to pay the retirement compensation provided for in this chapter, the additional amount needed for such retirement compensation is hereby appropriated from the General Revenue Fund as approved by the Department of Management Services.

(b) The Department of Management Services shall certify one-fourth of the amount so ascertained for each year to the Chief Financial Officer on or before

the last day of July, October, January, and April of each year. The Chief Financial Officer shall, on or before the first day of August, November, February, and May of each year, immediately transfer to the several funds of the retirement system the amounts due.

(3) All collection of contributions of a nonprofit professional association or corporation of teachers as referred to in s. 238.01(3) and (5) shall be made by such association or corporation in the following manner:

(a) On April 1 of each year, the Department of Management Services shall certify to any such nonprofit professional association or corporation of teachers the amounts which will become due and payable during the ensuing fiscal year to each of the funds of the retirement system to which such contributions are payable as set forth in this law.

(b) The Department of Management Services shall certify one-fourth of the amount so ascertained for each year to the nonprofit professional association or corporation of teachers on or before the last day of July, October, January, and April of each year. The nonprofit professional association or corporation of teachers shall, on or before the first day of August, November, February, and May of each year, draw its check payable to the department for the respective amounts due the several funds of the retirement system. Upon receipt of the check, the department shall immediately transfer to the several funds of the retirement system the amounts due, provided, however, that the amounts due the several funds of the retirement system from any such association or corporation for creditable service accruing to any such member before July 1, 1947, shall be paid prior to the retirement of any such member.

History.—s. 11, ch. 19014, 1939; CGL 1940 Supp. 892(166); s. 6, ch. 23864, 1947; s. 10, ch. 29942, 1955; s. 9, ch. 63-554; ss. 12, 31, 35, ch. 69-106; s. 1, ch. 73-305; s. 1, ch. 73-326; s. 142, ch. 81-259; s. 8, ch. 85-61; s. 5, ch. 87-19; s. 4, ch. 92-139; s. 97, ch. 92-279; s. 55, ch. 92-326; s. 14, ch. 95-148; s. 81, ch. 99-255; s. 261, ch. 2003-261.

238.12 Duties of employers.—

(1) Each employer shall keep such records and, from time to time, shall furnish such information as the Department of Management Services may require in the discharge of its duties. Upon the employment of any teacher to whom this chapter may apply, the teacher shall be informed by his or her employer of his or her duties and obligations in connection with the retirement system as a condition of his or her employment. Every teacher accepting employment shall be deemed to consent and agree to any deductions from his or her compensation required in this chapter and to all other provisions of this chapter.

(2) During September of each year, or at such other time as the department shall approve, each

employer shall certify to the department the names of all teachers to whom this chapter applies.

(3) Each employer shall, on the first day of each calendar month, or at such less frequent intervals as the department may approve, notify the department of the employment of new teachers, removals, withdrawals and changes in salary of members that have occurred during the preceding month, or the period covered since the last notification.

History.—s. 12, ch. 19014, 1939; CGL 1940 Supp. 892(167); ss. 31, 35, ch. 69-106; s. 1, ch. 73-326; s. 15, ch. 95-148; s. 82, ch. 99-255.

238.13 Limitation on membership.—

(1) No other provision of law in any other statute which provides wholly or partly at the expense of the state for pensions or for retirement benefits for teachers of the said state, their surviving spouses, or other dependents, shall apply to members or beneficiaries of the retirement system established by this chapter, their surviving spouses or other dependents. No person who shall become a teacher, as defined herein, after July 1, 1939, shall be eligible to a pension under any statute heretofore enacted.

(2) No person who is fully covered by a compulsory civil service retirement plan shall be a member of the retirement system under this chapter; provided, however, that any person who is presently a member of the retirement system and is also fully covered by a compulsory civil service retirement plan may continue to be a member of the retirement system or at his or her option may withdraw from such retirement system and thereupon be entitled to receive all of his or her accumulation in the Annuity Savings Trust Fund together with the interest thereon.

History.—s. 13, ch. 19014, 1939; CGL 1940 Supp. 892(168); s. 7, ch. 61-458; s. 16, ch. 95-148.

238.14 Protection against fraud.—Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Should any change or error in records result in any member or beneficiary receiving from the retirement system more or less than he or she would have been entitled to receive had the records been correct, then on discovery of any such error the department shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit, to which such member or beneficiary was correctly entitled, shall be paid.

History.—s. 14, ch. 19014, 1939; CGL 1940 Supp. 892(169), 8115(6); ss. 31, 35, ch. 69-106; s. 142, ch. 71-136; s. 17, ch. 95-148; s. 83, ch. 99-255.

238.15 Exemption of funds from taxation, execution, and assignment.—The pensions, annuities or any other benefits accrued or accruing to any person under the provisions of this chapter and the accumulated contributions and cash securities in the funds created under this chapter are exempted from any state, county or municipal tax of the state, and shall not be subject to execution or attachment or to any legal process whatsoever, and shall be unassignable, except:

(1) That any teacher who has retired shall have the right and power to authorize in writing the Department of Management Services to deduct from his or her monthly retirement allowance money for the payment of the premiums on group insurance for hospital, medical and surgical benefits, under a plan or plans for such benefits approved in writing by the Chief Financial Officer, and upon receipt of such request the department shall make the monthly payments as directed; and

(2) As may be otherwise specifically provided for in this chapter.

History.—s. 15, ch. 19014, 1939; CGL 1940 Supp. 892(170); s. 11, ch. 29942, 1955; ss. 13, 31, 35, ch. 69-106; s. 1, ch. 73-326; s. 18, ch. 95-148; s. 84, ch. 99-255; s. 262, ch. 2003-261.

238.16 Penalties.—Any person subject to the terms and provisions of this chapter, including the individual members of all boards, who shall violate any of the provisions of this chapter or any valid rule or regulation promulgated under authority of the chapter shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day of such violation shall constitute a separate offense.

History.—s. 16, ch. 19014, 1939; CGL 1940 Supp. 8115(7); s. 143, ch. 71-136.

238.17 Employees of nonprofit professional association or corporation of teachers functioning on a statewide basis; intent.—It is the intent of this section to grant to employees of a nonprofit professional association or corporation of teachers who are or become members of the Teachers' Retirement System all the rights, privileges, and benefits therefrom as are or may be granted to all other members of the Teachers' Retirement System; however, for other than creditable service as a teacher as defined in s. 238.01(3) rendered to a state, county, municipality, or other taxing district by any such employee, the state shall not make any contributions on account of such service.

History.—s. 7, ch. 23864, 1947; s. 6, ch. 87-19.

238.171 Monthly allowance; when made.—

(1) Whenever any person has served as a teacher in the public schools of Florida or has served therein as superintendent, or both, for an aggregate

period of 20 or more years, and such person is then incapacitated to do and perform any vocational work sufficient to earn a livelihood, such person shall thereafter, so long as the above conditions exist, during the remainder of his or her life, be entitled to a monthly allowance of \$150. However, no person who has ever been eligible to become a member of the Teachers' Retirement System of the state shall be entitled to receive such allowance.

(2) Effective July 1, 1975, whenever any person has served as a teacher in the public schools of Florida, is 70 years of age or older, and is incapacitated to do and perform any vocational work sufficient to earn a livelihood, such person shall thereafter, during the remainder of his or her life, be entitled to a monthly allowance based on years of service as follows:

(a) An aggregate of 10 years but not more than 15 years, a monthly allowance of \$75;

(b) More than 15 years and up to 20 years, a monthly allowance of \$100.

No person who has ever been eligible to become a member of the Teachers' Retirement System of the state shall be entitled to receive such allowance. The monthly allowance authorized by this subsection shall begin on July 1, 1975.

(3)(a) On July 1, 1974, the director of the Division of Retirement shall adjust the monthly allowance provided for incapacitated teachers under this section by increasing said allowance by a percentage which shall be equal to the percentage change in the average cost-of-living index, as defined in chapter 121, over the period between April 1, 1967, and March 31, 1973. The percent of increase, as of July 1, 1974, shall be 25.4 percent, which is the average cost-of-living increase percentage from April 1, 1967, through March 31, 1973.

(b) On July 1, 1975, and each July 1 thereafter, the Department of Management Services shall adjust the monthly allowance being paid on said date. The percentage of such adjustment shall be equal to the percentage change in the average cost-of-living index during the preceding 12-month period, April 1 through March 31, ignoring changes in the cost-of-living index which are greater than 3 percent during the preceding fiscal year.

(c) On July 1, 1981, each incapacitated teacher who is receiving an allowance pursuant to this section shall receive a supplementary cost-of-living adjustment, to be applied by adjusting the incapacitated teacher's monthly allowance to an amount equal to the sum of the monthly allowance being received on June 30, 1981, plus a percentage of this allowance, which percentage will be determined as follows:

1. For incapacitated teachers with 30 years' service or more, the percentage shall equal the product

of 1 percent multiplied by the number of complete years that have elapsed between the commencement of the allowance to such person as provided by this section and July 1, 1981.

2. For incapacitated teachers with 20 years' service or more, but less than 30 years' service, the percentage shall equal the product of 0.9 percent multiplied by the number of complete years that have elapsed between the commencement of the allowance to such person as provided by this section and July 1, 1981.

3. For incapacitated teachers with 10 years' service or more, but less than 20 years' service, the percentage shall equal the product of 0.8 percent multiplied by the number of complete years that have elapsed between the commencement of the allowance to such person as provided by this section and July 1, 1981.

For purposes of the July 1, 1981, implementation of the adjustment provided in paragraph (b), the monthly allowance being paid on that date shall be equal to the allowance as adjusted by this paragraph, and the adjustment provided in paragraph (b) shall be in addition to the adjustment provided by this paragraph.

History.—s. 550, ch. 19355, 1939; CGL 1940 Supp. 892(154); s. 1, ch. 22017, 1943; s. 1, ch. 22841, 1945; s. 1, ch. 25411, 1949; s. 1, ch. 29918, 1955; s. 1, ch. 63-540; s. 18, ch. 65-420; s. 1, ch. 65-485; s. 1, ch. 67-517; s. 1, ch. 69-300; s. 1, ch. 70-228; s. 91, ch. 72-221; s. 1, ch. 72-371; s. 2, ch. 74-303; s. 1, ch. 75-270; s. 1, ch. 77-174; s. 8, ch. 81-307; s. 109, ch. 83-217; s. 19, ch. 95-148; s. 85, ch. 99-255.

Note.—Former s. 231.50.

238.172 Proof required.—For any person to obtain the allowance as set forth in s. 238.171 the person shall make such proof of the facts and conditions entitling him or her to the allowance as shall reasonably be required by the state board, and when such proof has been submitted to the satisfaction of the state board, the Chief Financial Officer shall pay to such person the monthly allowance provided for herein.

History.—s. 551, ch. 19355, 1939; CGL 1940 Supp. 892(155); s. 1, ch. 20914, 1941; s. 91, ch. 72-221; s. 20, ch. 95-148; s. 263, ch. 2003-261.

Note.—Former s. 231.51.

238.173 Monthly allowance to widows or widowers of pensioners.—When any teacher, drawing pension under s. 238.171, shall die leaving surviving a widow or widower to whom such pensioner has been married for a continuous period of at least 10 years immediately prior to his or her death, and from whom no dissolution of marriage is obtained, such widow or widower, upon proof of marriage to and continuation of marriage for the minimum period with, and death of, said pensioner, shall be granted a pension payable from the date of the death of said pensioner, and at the same time and rate as other

pensions paid under s. 238.171. The Chief Financial Officer is authorized and directed to draw his or her warrants in payment of such pensions so long as such widow or widower shall remain unmarried and continue to be a resident of the state; provided, however, that nothing herein contained shall be so construed as to allow such pension to be paid to any widow or widower where such widow or widower of a deceased pensioner under this section receives a like pension in his or her own right as a retired school teacher.

History.—s. 1, ch. 20914, 1941; s. 91, ch. 72-221; s. 1, ch. 73-300; s. 21, ch. 95-148; s. 264, ch. 2003-261.

Note.—Former s. 231.52.

238.174 Appropriation for monthly allowance to incapacitated teachers.—There is appropriated out of any moneys in the State Treasury not otherwise appropriated, a sufficient sum of money to meet the requirements of s. 238.171.

History.—s. 3, ch. 14782, 1931; s. 91, ch. 72-221.

Note.—Former ss. 242.06, 231.53.

238.175 Members with prior service in federally operated state schools; eligibility for special credits.—

(1) Any member of the Teachers' Retirement System or the Florida Retirement System established respectively by this chapter and chapter 121 who taught in a public school in Florida which was taken over and operated by the United States Government pursuant to Pub. L. No. 81-874 or other Federal Law, may claim and receive credit in the retirement system in which he or she is participating for the time he or she taught in such schools, while they were operated by the United States Government under the following conditions, provided credit for such teaching time has not been granted in any other state or federal retirement system.

(a) If the member was a member of the Teachers' Retirement System prior to the time he or she began teaching in the public schools operated by the United States Government, he or she may claim and receive credit for such teaching time in the retirement system in which he or she is participating as prior service upon the payment of the amounts required to obtain credit for such prior service pursuant to the laws and rules governing the administration of his or her retirement system.

(b) If the member was not a member of the Teachers' Retirement System prior to the time he or she began teaching in the public schools operated by the United States Government, he or she may claim and receive retirement credit for such teaching time in the following manner:

1. A member of the Teachers' Retirement System may receive retirement credit for the time he or she taught in such federally operated schools as prior

teaching service outside the state pursuant to the provisions of s. 238.06(4).

2. A member of the Florida Retirement System may receive retirement credit for the time he or she taught in such federally operated schools as past service pursuant to the provisions of, and following the payment of the amounts specified in, s. 121.081(1), notwithstanding any contrary provisions in said s. 121.021(18), or other provisions of law.

(2) The administrator of the retirement system shall make such rules and regulations as are necessary to carry out and implement the provisions of this section.

History.—s. 1, ch. 72-251; s. 22, ch. 95-148.

238.181 Reemployment after retirement; conditions and limitations.—

(1) Any person who is retired under this chapter, except under the disability provisions of s. 238.07, may be employed by an employer that does not participate in a state-administered retirement system and may receive compensation from such employment without limiting or restricting in any way the retirement benefits payable to such person.

(2)(a) Any person retired under this chapter, except under the disability retirement provisions of s. 238.07, may be reemployed by any private or public employer after retirement and receive retirement benefits and compensation from his or her employer without limitation, except that no person may receive both a salary from reemployment with any agency participating in the Florida Retirement System and retirement benefits under this chapter for a period of 12 months immediately subsequent to the date of retirement.

(b) Any person to whom the limitation in paragraph (a) applies who violates such reemployment limitation and who is reemployed with any agency participating in the Florida Retirement System before completion of the 12-month limitation period shall give timely notice of this fact in writing to his or her employer and to the Department of Management Services and shall have his or her retirement benefits suspended for the balance of the 12-month limitation period. Any person employed in violation of this paragraph and any employing agency which knowingly employs or appoints such person without notifying the department to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received while reemployed during this reemployment limitation period shall be repaid to the retirement trust fund, and retirement benefits shall

remain suspended until such repayment has been made. Benefits suspended beyond the reemployment limitation shall apply toward repayment of benefits received in violation of the reemployment limitation.

(c) Effective July 1, 2003, after a retired member has been retired for 1 calendar month in accordance with s. 121.021(39), a district school board may reemploy such retired member as a substitute or hourly teacher on a noncontractual basis, or reemploy such retired member as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis. Any other retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. All retirees reemployed under this paragraph shall become renewed members of the Florida Retirement System under s. 121.122, and district school boards reemploying such retired members as described herein are subject to the contributions as provided for renewed membership.

(d) A community college board of trustees may reemploy a retired member as an adjunct instructor, that is, an instructor who is noncontractual and part time, or as a participant in a phased retirement program within a community college, after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. Boards of trustees reemploying such instructors are subject to the retirement contribution required in paragraph (g). A retired member may be reemployed as an adjunct instructor for no more than 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during his or her first 12 months of retirement shall give timely notice in writing to his or her employer and to the department of the date he or she will exceed the limitation. The department shall suspend his or her retirement benefits for the remainder of his or her first 12 months of retirement. Any person employed in violation of this paragraph and any employing agency which knowingly employs or appoints such person without notifying the department to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during his or her first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of

retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

(e) The Board of Trustees of the Florida School for the Deaf and the Blind may reemploy a retired member as a substitute teacher, substitute residential instructor, or substitute nurse on a noncontractual basis after he or she has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The Board of Trustees of the Florida School for the Deaf and the Blind reemploying such teachers, residential instructors, or nurses is subject to the retirement contribution required by paragraph (g). Reemployment of a retired member as a substitute teacher, substitute residential instructor, or substitute nurse is limited to 780 hours during the first 12 months of his or her retirement. Any retired member reemployed for more than 780 hours during his or her first 12 months of retirement shall give timely notice in writing to his or her employer and to the department of the date he or she will exceed the limitation. The department shall suspend his or her retirement benefits for the remainder of his or her first 12 months of retirement. Any person employed in violation of this paragraph and any employing agency which knowingly employs or appoints such person without notifying the department to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during his or her first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and his or her retirement benefits shall remain suspended until payment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

(f) The State University System may reemploy a retired member as an adjunct faculty member or as a participant in a phased retirement program within the State University System after the retired member has been retired for 1 calendar month, in accordance with s. 121.021(39). Any retired member who is reemployed within 1 calendar month after retirement shall void his or her application for retirement benefits. The State University System is subject to the retired contribution required in paragraph (g), as appropriate. A retired member may be reemployed as an adjunct faculty member or a participant in a phased retirement program for no more than 780 hours during the first 12

months of his or her retirement. Any retired member reemployed for more than 780 hours during his or her first 12 months of retirement shall give timely notice in writing to his or her employer and to the department of the date he or she will exceed the limitation. The department shall suspend his or her retirement benefits for the remainder of his or her first 12 months of retirement. Any person employed in violation of this paragraph and any employing agency which knowingly employs or appoints such person without notifying the department to suspend retirement benefits shall be jointly and severally liable for reimbursement to the retirement trust fund of any benefits paid during the reemployment limitation period. To avoid liability, such employing agency shall have a written statement from the retiree that he or she is not retired from a state-administered retirement system. Any retirement benefits received by a retired member while reemployed in excess of 780 hours during his or her first 12 months of retirement shall be repaid to the Retirement System Trust Fund, and retirement benefits shall remain suspended until repayment is made. Benefits suspended beyond the end of the retired member's first 12 months of retirement shall apply toward repayment of benefits received in violation of the 780-hour reemployment limitation.

(g) The employment by an employer of any retiree of a state-administered retirement system shall have no effect on the average final compensation or years of creditable service of such retiree. Prior to July 1, 1991, upon employment of any person, other than an elected officer as provided in s. 121.053, who has been retired under any state-administered retirement program, the employer shall pay retirement contributions in an amount equal to the unfunded actuarial accrued liability portion of the employer contribution which would be required for a regular member of the Florida Retirement System. Effective July 1, 1991, contributions shall be made as provided in s. 121.122 for renewed membership.

(h) The limitations of this subsection apply to reemployment in any capacity with an "employer" as defined in s. 121.021(10), irrespective of the category of funds from which the person is compensated.

History.—s. 2, ch. 28110, 1953; s. 12, ch. 29942, 1955; s. 1, ch. 57-189; s. 1, ch. 69-300; s. 1, ch. 72-215; s. 4, ch. 80-126; s. 9, ch. 81-307; s. 22, ch. 84-266; s. 5, ch. 85-220; s. 2, ch. 88-61; s. 21, ch. 90-274; s. 18, ch. 92-122; s. 23, ch. 95-148; s. 19, ch. 97-180; s. 86, ch. 99-255; s. 1, ch. 2004-355.

238.183 Developmental research school and Florida School for the Deaf and the Blind instructional personnel; reemployment after retirement.—

(1) Notwithstanding any other law, instructional personnel, as defined in s. 1012.01(2), employed by a developmental research school or the Florida School for the Deaf and the Blind are eligible for

reemployment after retirement in the same manner as classroom teachers who are employed by the district school boards, as described in ss. 121.091(9)(b) and 238.181(2)(c).

(2) Instructional personnel, as defined in s. 1012.01(2), employed by a developmental research school and authorized by the school's director, or if the school has no director, by the school's principal, are eligible for the Deferred Retirement Option Program (DROP) beyond 60 months in the same manner as the instructional personnel who are employed by the district school boards and authorized by the district school superintendent, as described in s. 121.091(13).

History.—s. 3, ch. 2004-355; s. 20, ch. 2009-209.

238.184 Charter school instructional personnel; reemployment after retirement.—

Effective July 1, 2004, the director or principal of a charter school participating in the Florida Retirement System may reemploy a retired member as a substitute or hourly teacher on a noncontractual basis, or reemploy such retired member as instructional personnel, as defined in s. 1012.01(2)(a), on an annual contractual basis, after he or she has been retired for 1 calendar month in accordance with s. 121.021(39).

History.—s. 4, ch. 2004-355.

238.31 Provision for modification of plan E.—

Notwithstanding any provision contained herein to the contrary the provisions relating to retirement under s. 238.07(2)(e) shall be subject to amendment or modification by subsequent legislation and all other provisions of this chapter relating to the administration of plan E, or to the duties, rights, privileges, requirements and benefits of the members of plan E shall be subject to amendment, modification, deletion, or substitution by act of the 1965 Legislature of this state and all such legislation shall be applicable retroactively to July 1, 1963, with respect to all those persons who become members of plan E on or after July 1, 1963; provided, however, that such legislation shall not provide for a normal retirement age of members to exceed the age of 65 years, nor shall such legislation be applicable to any benefits which become payable to, or with respect to, such members prior to July 1, 1965.

History.—s. 11, ch. 63-554.

238.32 Service credit in disputed cases.—The Department of Management Services may in its discretion allow or deny a member service credit in disputed or doubtful cases for employment in Florida and out-of-state schools in order to serve the best interests of the state and the member, subject to the membership dates set forth in s. 238.06(4).

History.—s. 4, ch. 65-552; ss. 31, 35, ch. 69-106; s. 1, ch. 73-326; s. 87, ch. 99-255.

238.325 Statements of purpose and intent and other provisions required for qualification under the Internal Revenue Code of the United States.—

Any other provisions in this chapter to the contrary notwithstanding, it is specifically provided that:

(1) The purpose of this chapter is to provide pension benefits for the exclusive benefit of the member employees or their beneficiaries.

(2) No part of the principal or income of the trust fund created hereunder shall be used or diverted for purposes other than for the exclusive benefit of the member employees or their beneficiaries and for the payment of administrative cost.

(3) Forfeitures, if any, shall not be applied to increase the benefits any member employee would otherwise receive under this chapter.

(4) Upon termination or partial termination, upon discontinuance of contributions, abandonment, or merger, or upon consolidation or amendment of this chapter, the rights of all affected employees to benefits accrued as of the date of any of the foregoing events, or the amounts credited to the account of any member employee, shall be and continue thereafter to be nonforfeitable except as otherwise provided by law.

(5) No benefit hereunder shall exceed the maximum amount allowable by law for qualified pension plans under existing or hereafter-enacted provisions of the Internal Revenue Code of the United States.

(6) The compensation limits established by s. 401(a)(17) of the Internal Revenue Code prior to the Omnibus Budget Reconciliation Act of 1993, and adjusted for changes in the cost of living since 1989, in the manner provided by s. 401(a)(17) of the Internal Revenue Code of 1991, were part of the Teachers' Retirement System of Florida on July 1, 1993.

(7) Except as otherwise provided herein, the provisions of this section are declaratory of the legislative intent upon the original enactment of this chapter and are hereby deemed to have been in effect from such date.

History.—s. 1, ch. 78-108; s. 15, ch. 96-368.